

... a regular term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 3rd day of June, 1987, the following order was made and entered, to-wit:

Committee on Legal Ethics of The West Virginia  
State Bar, Complainant

17342 vs.

Kyle G. Lusk, a member of The West Virginia  
State Bar, Respondent

Upon an order of this Court issued December 19, 1986, suspending for three months respondent's license to practice law in the State of West Virginia.

On a former day, to-wit, May 28, 1987, came the Committee on Legal Ethics of The West Virginia State Bar, by Jack M. Marden, Bar Counsel, and Sherri Goodman Dusic, Assistant Disciplinary Counsel, its attorneys, pursuant to respondent's petition for reinstatement to The West Virginia State Bar, and presented to the Court a transcript of the hearing before the Subcommittee of the Legal Ethics Committee held on May 7, 1987; the Subcommittee's findings; and the recommendations of the Committee on Legal Ethics that said respondent be expeditiously restored to good standing as a member of The West Virginia State Bar. And, on a later day, to-wit, May 29, 1987, came the respondent, Kyle G. Lusk, by Allan H. Masinter, his attorney, and presented to the Court his written waiver of a hearing in this matter.

Upon consideration whereof, the Court is of opinion to and doth hereby order that the respondent, Kyle G. Lusk, be, and he is hereby reinstated to practice law in the State of West Virginia,

effective the 3rd day of June, 1987; all of which is ordered to be certified to the respondent, Kyle G. Lusk, and to the Committee on Legal Ethics of The West Virginia State Bar.

A True Copy

Attest: \_\_\_\_\_  
Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 19th day of December, 1986, the following order was made and entered, to-wit:

Committee on Legal Ethics of the  
West Virginia State Bar, Complainant

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DEC 24 '86

W. VA. STATE BAR

17342

vs. Per Curiam

Kyle G. Lusk, a member of The West Virginia  
State Bar, Respondent

The Court having maturely considered the verified complaint praying for suspension of the respondent's license to practice law in the State of West Virginia for three months, together with the Original Report of The Committee on Legal Ethics, as provided by Part D, Article VI of the By-Laws, Rules and Regulations of the West Virginia State Bar, with the transcript of the formal hearings held before the Committee on Legal Ethics on February 20, 1986, and March 13, 1986, the Findings and Recommendations of said Committee and the various pleadings and exhibits filed with the Committee; the rule awarded thereon; the objection and response of the respondent to the complaint; and upon the argument and briefs of counsel thereon, today handed down a prepared order suspending the license of respondent, Kyle G. Lusk, to practice law in the State of West Virginia for a period of three months commencing January 20, 1987, and ordering him to reimburse the Committee on Legal Ethics the sum of Two Thousand Two Hundred Forty-three Dollars and Eleven cents (\$2,243.11), its costs incurred in this proceeding.

A True Copy

Attest:

*Abigail R. Ramsey*

Clerk, Supreme Court of Appeals

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 22nd day of January, 1987, the following order was made and entered, to-wit:

Committee on Legal Ethics of the West Virginia State Bar, Complainant

17342 vs.

Kyle G. Lusk, a member of the West Virginia State Bar, Respondent

On a former day, to-wit, January 13, 1987, came the respondent, Kyle G. Lusk, by Allan H. Masinter, his attorney, and presented to the Court his motion for reconsideration and modification of discipline rendered by this Court in its order of December 19, 1986; which motion having been seen and inspected by the Court is hereby refused.

A True Copy .

Attest:

  
Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 3rd day of June, 1987, the following order was made and entered, to-wit:

Committee on Legal Ethics of The West Virginia State Bar, Complainant

17342 vs.

Kyle G. Lusk, a member of The West Virginia State Bar, Respondent

Upon an order of this Court issued December 19, 1986, suspending for three months respondent's license to practice law in the State of West Virginia.

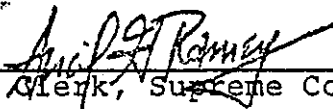
On a former day, to-wit, May 28, 1987, came the Committee on Legal Ethics of The West Virginia State Bar, by Jack M. Marden, Bar Counsel, and Sherri Goodman Dusic, Assistant Disciplinary Counsel, its attorneys, pursuant to respondent's petition for reinstatement to The West Virginia State Bar, and presented to the Court a transcript of the hearing before the Subcommittee of the Legal Ethics Committee held on May 7, 1987; the Subcommittee's findings; and the recommendations of the Committee on Legal Ethics that said respondent be expeditiously restored to good standing as a member of The West Virginia State Bar. And, on a later day, to-wit, May 29, 1987, came the respondent, Kyle G. Lusk, by Allan H. Masinter, his attorney, and presented to the Court his written waiver of a hearing in this matter.

Upon consideration whereof, the Court is of opinion to and doth hereby order that the respondent, Kyle G. Lusk, be, and he is hereby reinstated to practice law in the State of West Virginia,

effective the 3rd day of June, 1987; all of which is ordered to be certified to the respondent, Kyle G. Lusk, and to the Committee on Legal Ethics of The West Virginia State Bar.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

Per Curiam

Committee on Legal Ethics of  
the West Virginia State Bar

DEC 19 1988

No. 17342 v.

Kyle G. Lusk, a member of the  
West Virginia State Bar

This is a disciplinary proceeding instituted by the Committee on Legal Ethics of the West Virginia State Bar against Kyle G. Lusk, a member of the Bar. The Committee has recommended that the Court suspend Mr. Lusk's license to practice law for three months based upon findings that he, in violation of the Code of Professional Responsibility, accepted and continued employment when differing interests were involved; that he neglected to carry out a contract of employment; and that he engaged in dishonesty, fraud, deceit, or misrepresentation. The Committee's findings grew out of an investigation of the respondent's representation of Pamela L. Ramieh. After examining the record we conclude that the respondent did violate the Code of Professional Responsibility and that a suspension of his license to practice law for three months is an appropriate sanction.

The evidence developed during the hearings in this case showed that in January or February, 1982, Sharon and Elmer Kennedy retained the respondent to represent them in obtaining a premium refund on an insurance policy procured by them from Mrs. Pamela L. Ramieh. Before that matter was settled, the respondent undertook to represent Mrs. Ramieh in an action against her former business partner, Mary Jane Gunther. The Court believes that in undertaking to pursue matters both against and for Mrs. Ramieh, at the same time, the respondent became involved in a

~~conflict-of-interest situation. The Court also believes that the~~  
~~respondent neglected both matters and failed to prosecute them in~~  
an appropriate manner.

Specifically, the evidence in this case shows that in August, 1982, Sharon and Elmer Kennedy contacted Mrs. Ramieh about procuring insurance for their mobile home moving business in Wyoming County. Mrs. Ramieh obtained a policy for them from the Protective Insurance Company.

Shortly after issuance of the policy the Kennedys became discontent with it and requested that it be cancelled and that their premium be refunded. Mrs. Ramieh procured the cancellation of the policy and a refund of \$318.00.

The Kennedys, who were unhappy with the amount of the refund, contacted the respondent Lusk in January or February, 1983, about the possibility of his obtaining, through legal action, a full refund of \$460.00 from Mrs. Ramieh. According to their testimony, he undertook to represent them in that matter and certain unrelated matters, and at the initial meeting collected \$300.00 from them as a retainer. He also took possession of certain papers relating to their claim against Mrs. Ramieh.

Before the dispute between the Kennedys and Mrs. Ramieh was resolved, Mrs. Ramieh contacted the respondent, on July 25, 1983, about his representing her in a dispute with her former business partner, Mary Jane Gunther. Mrs. Ramieh and Ms. Gunther had dissolved their partnership in September, 1982, and Mrs. Ramieh, who believed that Ms. Gunther had wrongfully removed funds from the partnership, had sued Mrs. Gunther in magistrate court. Ms. Gunther had removed the matter to circuit court, and Mrs. Ramieh believed that she needed professional representation in the matter. According to her testimony, she understood at the close of her meeting with the respondent that he would represent



her. She turned over to him certain documents relating to the dispute, and on August 16, 1983, pursuant to her agreement with him, gave him a check for \$100.00 for proceeding in the matter.

The respondent did not enter into a written contract with either the Kennedys or Mrs. Ramieh.

The evidence fails to show that the respondent performed substantial and meaningful acts in representing either the Kennedys against Mrs. Ramieh or Mrs. Ramieh against Ms. Gunther. Mrs. Kennedy herself ultimately personally contacted Mrs. Ramieh and reached a settlement with her on the insurance premium. The respondent was in no way involved in this. Mrs. Ramieh's suit against Ms. Gunther was dismissed in June, 1982, for failure to prosecute for three terms.

Mrs. Ramieh filed an ethics complaint against the respondent in February, 1984, after she learned that he was representing the Kennedys against her.

After conducting its investigation and hearings in this matter the Committee on Legal Ethics found that the respondent had violated DR 5-105(A) by undertaking representation of the Kennedys and Mrs. Ramieh when there were potential conflicts of interest likely to affect his professional judgment. The Committee also found that he violated DR 6-101(A) (3), DR 7-101(A) (2), and DR 1-102(A) (4) in his handling of the Ramieh-Gunther case.

DR 5-105(A) provides:

A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

~~DR 6-101(A)(3) prohibits a lawyer from neglecting a legal matter~~

entrusted to him. DR 7-101(A)(2) states:

A lawyer shall not intentionally:

\* \* \*

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

DR 1-102(A)(4) provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Where a lawyer's conduct falls below the minimum level established by the disciplinary rules of the Code of Professional Responsibility, the attorney is subject to disciplinary action.

The Committee on Legal Ethics v. Tatterson, \_\_\_ W.Va. \_\_\_, 319 S.E.2d 381 (1984).

In syllabus point 1 of Committee on Legal Ethics v. Lewis, 156 W.Va. 809, 197 S.E.2d 312 (1973), the Court stated the standard of proof to be applied to attorneys in disciplinary proceedings:

In a court proceeding prosecuted by the Committee on Legal Ethics of the West Virginia State Bar for the purpose of having suspended the license of an attorney to practice law for a designated period of time, the burden is on the Committee to prove by full, preponderating and clear evidence the charges contained in the complaint filed on behalf of the Committee.

See also Committee on Legal Ethics v. Daniel, 160 W.Va. 388, 235 S.E.2d 369 (1977); Committee on Legal Ethics v. Pietranton 143 W.Va. 11, 99 S.E.2d 15 (1957).

This Court believes that in the case presently under consideration the Committee has met its burden of establishing the charges against the respondent relating to conflict of interest and neglect of legal matters by full, preponderating and clear evidence.

It appears to the Court that if the respondent was, in a professional capacity, pursuing matters both against and for Mrs. Ramieh at the same time, he was in a conflict of interest situation potentially affecting his professional judgment. DR 5-105(A) specifically requires an attorney to refrain from accepting employment when it will place him in such a situation.

The respondent basically argues that he did not undertake to represent Mrs. Ramieh in her claim against Ms. Gunther; that, in effect, he did not agree to represent her in her suit against Ms. Gunther. He argues that he simply undertook to investigate her situation to determine whether she had a case worth pursuing, and he so testified during the hearings in this case. The testimony of Mrs. Ramieh indicates that she understood that he was pursuing her case. The evidence shows that the respondent took possession of the papers relating to Mrs. Ramieh's case, and he accepted money from her for investigating or pursuing it. In spite of the respondent's argument, the Court believes that the evidence clearly and convincingly shows that he undertook to exercise professional judgment in behalf of Mrs. Ramieh, that he did, in fact, undertake to represent her.

The Court also believes that the evidence adequately demonstrates that the respondent neglected the matters entrusted to him by Mrs. Ramieh in violation of DR 6-101(A)(3) and DR 7-101(A)(3). The record indicates that he did little, if anything, in obtaining the premium refund for which the Kennedys retained him. They ultimately, through their personal efforts, reached a settlement with Mrs. Ramieh. The record also suggests that while the respondent may have conducted a preliminary assessment of Mrs. Ramieh's claim against Ms. Gunther, he did not notify her of his findings, and he did not respond to her inquiries

~~about his progress. Ultimately her case was dismissed for failure to prosecute in a timely manner.~~

Given the facts of the case, the Court believes that the evidence indicates that the respondent's license to practice law should be suspended for three months.

Accordingly, it is Adjudged and Ordered that the respondent Kyle G. Lusk's license to practice law be, and the same hereby is, suspended for the period of three months.

Justice Neely dissents and would reprimand the respondent rather than suspend his license to practice law for three months.